

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 18, 2008

**D051001        People v. Alvarez**

The petition for rehearing is denied.

**D049765        People v. Ojito**

The convictions on counts 1 and 2 are affirmed. The convictions on counts 3 through 8 are reversed. The matter is remanded for resentencing. McDonald, Acting P.J.;

We Concur: McIntyre, J., O'Rourke, J.

**D053550        Cravens v. The Superior Court of San Diego County/The People**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 19, 2008

**D051488        Lipkowitz v. Rite Aid Corporation**

The judgment is affirmed. Rite Aid is awarded its costs on appeal. McIntyre, Acting P.J.;  
We Concur: O'Rourke, J., Irion, J.

**D051175        Attal v. Taylor et al.**

The opinion filed on July 25, 2008, is modified (no change in judgment). The petition for  
rehearing is denied.

**D051036        People v. Hirugami**

The judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., Irion, J.

**D052055        People v. Flacco**

The judgment is affirmed. Irion, J.; We Concur: Huffman, Acting P.J., Aaron, J.

**D053387        Mataele v. Superior Court of San Diego County/Mataele**

The petition for writ of supersedeas and request for stay is denied.

**D053387        Mataele v. Superior Court of San Diego County/Mataele**

The petition is denied. The Clerk is directed to return the psychological evaluations filed  
conditionally under seal to petitioner.

**D048759        Von Arx v. Max Equipment Rental, LLC et al.**

Upon written request filed by appellant, the appeal is DISMISSED as to Charles Machine  
Works, Inc. ONLY and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule  
8.244(c)(2).)

**D053397        Gilliland v. Bradshaw**

The petition for writ of supersedeas and request for stay is denied.

**D053547        Martinez-So v. Superior Court of Imperial County/People**

The petition is denied.

**D053475        In re Zepeda on Habeas Corpus**

The petition is denied.

**D053526        In re Alve on Habeas Corpus**

The petition is denied without prejudice to re-filing in Imperial County Superior Court.

**D052488        In re Shell on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 19, 2008 (Continued)

**D053500        Willis v. Superior Court of San Diego County/People**  
The petition is denied.

**D052568        In re Zepeda on Habeas Corpus**  
The petition is denied without prejudice to re-filing in the Fifth Appellate District.

**D052644        In re Cooley on Habeas Corpus**  
The petition is denied.

**D052574        In re Flores on Habeas Corpus**  
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 20, 2008

**D053502        Willis v. The Superior Court of San Diego County/People**  
The petition is denied.

**D051104        Gallagher v. Community Connection Resource Center Inc., et al.**  
**D051746        Gallagher v. Community Connection Resource Center Inc., et al.**  
(Consolidated) The order denying class certification is affirmed. The order denying hearing on the motion to substitute or amend is affirmed as modified to direct the trial court to allow any appropriate further proceedings in accordance with the views expressed in this opinion. Each party shall bear its own costs on appeal. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

**D052670        In re E.E. et al., Minors**  
The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., Irion, J.

**D053204        McAvoy et al. v. Superior Court of San Diego County/Levine et al.**  
Let a peremptory writ of mandate issue directing the superior court to vacate its order denying the motion for summary judgment, to reconsider the motion, and to enter an order in compliance with statute. McAvoy's are entitled to costs in the writ proceeding. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 8.264(b)(3).)

**D051510        Martini Ranch San Diego, LLC v. Columbia Casualty Company**  
Affirmed. Irion, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

**D052400        In re Adrianna P. et al., Juveniles**  
The case is remanded to the juvenile court with directions to vacate its order granting reunification services to Andrew. The order directing the Agency to provide reunification services to Maurice is affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Haller, J.; I Concur: McDonald, J., Huffman J., Concurring. I Concur in the holding and the reasoning in the majority opinion except for part IV. As to part IV, I Concur only in the result.

**D053181        Maria L. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**  
No timely petition for writ relief has been filed for A.L. His notice of intent is deemed to be abandoned. The case as to A.L. is DISMISSED.

**D052655        In re Isabel A., a Juvenile**  
The order is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Irion, J.

**D052347        People v. Ruiz**  
The judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 20, 2008 (Continued)

**D052688        In re N.M., a Juvenile**

The judgment is affirmed. Haller, Acting P.J.; We Concur: McDonald, J., Irion, J.

**D052267        Mahdavi v. Superior Court of San Diego County/Portofino Beach Inn**

Let a peremptory writ of mandate issue directing the appellate division of the superior court to vacate its December 20, 2007, order dismissing Mahdavi's limited appeal. Mahdavi is entitled to costs in the writ proceeding. CERTIFIED FOR PUBLICATION  
Aaron, J.; We Concur: McConnell, P.J., Benke, J.

**D051076        People v. Cardiel**

The judgment is affirmed. McIntyre, Acting P.J.; O'Rourke, J., Irion, J.

**D053442        In re Keeler on Application for Release Pending Appeal**

The application for release pending appeal has been read and considered by Justices Huffman, Haller and McDonald. The application is denied.

**D053437        In re Bass on Habeas Corpus**

The petition is denied without prejudice.

**D052819        Cooper et al. v. O'Toole**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
August 21, 2008

**D051990        In re Irwin V. a Juvenile**

The judgment is affirmed. Irion, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D052611        Nguyen v. Nguyen**

On July 23, 2008, the court struck appellant's initial opening brief filed on June 16, 2008, because it did not conform to the California Rules of Court. Appellant was granted until August 1, 2008, and then until August 18, 2008, to file a conforming brief and appendix. The opening brief and exhibits received on August 18, 2008, do not conform to the California Rules of Court, rules 8.44, 8.124(b), (d) & (g), and 8.204(b) & (d). The appeal is DISMISSED.

**D051002        People v. Davis**

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., Nares, J.

**D051145        Hidden Valley Ranch et al. v. City of Poway**

The judgment is affirmed. Poway shall recover its costs on appeal. McDonald, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D052438        People v. Clack**

Judgment affirmed. McConnell, P.J.; We Concur: Huffman, J., McDonald, J.

**D050951        Jones Fire Protection, Inc. v. Federal Insurance Company**

Upon written stipulation filed by the parties to the appeal, the appeal and cross-appeal are dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.

**D052356        Mowry Corp. v. Specified Fittings, Inc.**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

**D050595        City of El Centro et al. v. Menvielle et al.**

The opinion filed July 24, 2008 is ordered modified (no change in judgment). The petition for rehearing is denied.

**D052215        In re Arthur V., a Juvenile**

Affirmed. CERTIFIED FOR PUBLICATION. Irion, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 21, 2008 (Continued)

**D053405 Lindsay T. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Korey E. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

**D053324 In re Krouse on Habeas Corpus**

The petition is denied.

**D053338 National Union Fire Insurance Company of Pittsburgh, PA v. Superior Court of San Diego County/Cole et al.**

The petition is denied.

**D053327 In re Ford on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
August 22, 2008

**D053101        In re C.B., a Juvenile**

Appellant has failed to file a brief after notice given. The appeal is dismissed.

**D053484        In re Young on Habeas Corpus**

The petition for a writ of habeas corpus has been read and considered by Justices Huffman, Haller and McDonald. We take judicial notice of appeals D048545 and D051316.

A jury convicted Duane Andrew Young of three counts of robbery and three counts of being a felon in possession of a firearm. The jury also found Young personally used a firearm during the robberies and that he had four prior convictions, one serious prior conviction and one strike prior conviction. The court sentenced Young to 36 years in prison. On appeal this court reversed one robbery count and otherwise affirmed the judgment. On July 6, 2007, the trial court resentenced Young to 30 years, 8 months in prison.

Young contends insufficient evidence supports the enhancement that he personally used a gun during the September 13, 2004, robbery. The sufficiency of the evidence is not cognizable on a petition for a writ of habeas corpus. (*In re Lindley* (1947) 29 Cal.2d 709, 723.)

Young also contends trial counsel was ineffective by not obtaining Young's employment records for September 17, 2004, to show he had an alibi and did not commit a robbery on that date. Young has no evidentiary support for his claim and he has not shown that but for counsel's purported failings he would have achieved a better result.

The petition is denied.

**D051707        Gong v. RFG Oil Inc., et al.**

The opinion filed July 30, 2008, is ordered certified for publication.

**D051778        Adams et al. v. Fiserv, Iss et al.**

The judgment is reversed and the trial court is directed to enter an order overruling Fiserv's demurrers to the challenged causes of action. Plaintiffs are entitled to recover their costs on appeal. McIntyre, J.; We Concur: Haller, Acting P.J., McDonald, J.

**D051521        In re Esperanza C., a Juvenile**

It is ordered that the opinion filed on August 7, 2008, be modified. There is no change in the judgment.

**D053511        People v. The Superior Court of San Diego County/Sommer**

The petition is denied. Petitioner has an adequate remedy by way of appeal.

**D053485        In re Chakiris on Habeas Corpus**

The petition is denied.

**D053457        Leday v. Superior Court of San Diego County/People**

The petition is denied.